Superior Court of Arizona

En Banc

in Maricopa County

Vol. 2 No. 6 lune 1998 Newsletter of the Superior Court Law Library

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En Banc

Newsletter of the Superior Court Law Library

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Law Library News

□ New Display

If you are interested in learning more about Maricopa County leadership, stop by Study Room 217 on the second floor of the Law Library. There you will find pictures and biographies of each of the five county supervisors. A biography on the Clerk of the Board is also displayed along with both formal and informal meeting agendas.

Recent press releases have been printed from the county's web site at www.maricopa.gov and posted. Currently on display are articles about the new county curfew for teens and Maricopa County's move into one of the top five counties in the nation.

□ Law Library Web Page

Have you looked at our web page lately? (www.maricopa.gov/lawlibrary) If so, you may have noticed some changes. The content is basically the same, but the page has been reorganized to put more of the main links on the home page. This should reduce the number of jumps you have to make and get you to the information you need a little quicker. The Law Library's web page has links to a variety of law related reference and research resources, as well as publications produced by the library staff. We are continuously trying to improve the effectiveness of our site as a legal research tool. Please let us know if you have any suggestions, comments or questions about our web site.

□ Horizon

With the barcoding almost complete, the Law Library is going to begin issuing library cards. This is going to make checking out library materials much easier for you and us. Once the circulation system is up and running, you'll be able to see what material you have checked out, find out if you have any outstanding fines and place holds on material.

Please stop by the Information Desk and pick up an application form. In order to be issued a library card, you will have to show the same identification now required to check out a book. After that, all we'll need to see is your Superior Court Law Library Card. There will be no initial charge for the card, however, if your card becomes lost or damaged, we will charge a \$1.00 replacement fee. You will be asked to sign the application form and in doing so, you accept responsibility for all materials you check out, including but not limited to, all overdue fines and replacement costs for lost and damaged material.

☐ From the Southeast Branch

Some time in the next couple of months a major reconstruction project will begin at the Southeast Law Library. The County Attorney is in need of more space and will be constructing offices in the back half of the Library. Of course with the library space being downsized, the collection will also be downsized. We will make every attempt to keep our existing study and reading space as is. As always, any materials that the Southeast branch does not have a copy of can be sent from the main library downtown.

There are some goods things happening as a result of this downsizing. The first is

that all patrons will have to access the Library through Court Security; and the second will be the creation of a new Self Service Center (SSC) counter. This should create a better space for Law Library users and those seeking SSC assistance.

The SSC now has Legal Separation packets available, and Juvenile Dependency packets will be going into production in the next couple of weeks.

There is also an attorney roster published by the SSC in which attorneys can be listed. If you are an attorney and would like to know more about this roster please contact Bob James at 506-6314.

□ CLE Information

The Sixth Annual White Mountains Trial Skills Seminar will take place this year on July 31. "Crafting and Delivering Opening and Closing Arguments to Juries" will be held at the Hon-Dah Resort-Casino Conference Center which is just three miles east of Pinetop. Criminal and civil trial lawyers, newly admitted or experienced, are encouraged to attend.

Co-sponsored by the Navajo County Bar Association, this State Bar of Arizona seminar may qualify for up to 3.75 hours of MCLE, including 3 hours of ethics credit.

The faculty guarantees that you will leave being better prepared to plead your client's case to a jury. They will use movie clips of famous opening and closing arguments as a "springboard" to help the participants improve the skills necessary to deliver effective arguments to juries. The main focus will be on critical trial skills and the ethical issues associated with jury arguments.

Attendees are encouraged to dress comfortably and casually and to even bring the whole family for a weekend of hiking, biking, fishing and golfing.

To add a little peace in your life, plan on attending "Conflict Resolution and Confrontation Skills." Sponsored by CareerTrack, this 9 am to 1pm seminar will give you a proven way to resolve conflict in a manner that will actually benefit all those involved.

This seminar will be held in Phoenix on August 12th, in Tempe on August 11th, in Flagstaff on August 10th, and in Tucson on August 13th. Lunch will be provided. For more information on this seminar, contact CareerTracks at 1-800-325-5854 or visit them online at http:www.careertrack.com. You will have to contact the State Bar to find out how many continuing education credit hours will be approved.

Superior Court Update

□ Smithsonian Award

On April 6, the Superior Court of Arizona in Maricopa County was the recipient of the Computerworld Smithsonian Award and will be included in the Smithsonian Institution's Permanent Research Collection. The Computerworld Award was established in 1989 to document the progress of information technology and is recognized as the most prestigious awards program in the industry.

In a short summary, the Court was honored for "free public access to court case information over the Internet [which] helps minimize the fear, frustration, misunderstanding, and bewilderment that courts often create." Gordon Griller, Court Administrator, accepted the award on behalf of the Court in Washington, D.C. on the National Mall in front of the Smithsonian Castle.

To learn more about the Smithsonian awards program, visit their web site at http://innovate.si.edu. You can also see the congratulatory letter and medal the court received by stopping by the display case at the south end

of the East Court Building lobby.

Electronic Resources

□ Database Review

National Criminal Justice Reference Service Abstracts Database

http://www.ncjrs.org/cgi/database/ncjpubs.cgi

The NCJRS Abstracts Database, previously available on CD-ROM and as an online database through Dialog, is now freely available as an Internet database. A service of the National Institute of Justice, and other programs within the Department of Justice Office of Justice Programs, and the Office of National Drug Control Policy, the Database includes references to over 140,000 books, articles and reports on criminal justice topics. Each reference includes a brief annotation, a detailed abstract, and complete source and availability information. Search queries may include single words or phrases, and more complex queries may be constructed using connectors (and, or, not) and truncation. Searches can be global, or limited to subject, author or NCJRS number, and can be limited by publication year or a range of years. While an increasing number of the references are available on the Internet, such as those available on the NCJRS's Justice Information Center site, the Database records themselves do not include hyperlinks. Many of the documents are available through the NCJRS.

☐ Internet Site Reviews

Schroder, Kevin J. Computer Animation: The Litigator's Legal Ally. (Fall 1997)

http://:wings.buffalo.edu/Complaw/CompLawPapers/schroder.html

This is an article taken from *Computers and Law* published by the University of Buffalo. This paper was written to help the practicing attorney determine whether and when to use computer animation. It starts with the

definition of computer animation and describes the benefits it provides.

Once the basics have been discussed, it goes into the "how to do" section. The topics discussed include how to know when to use computer animation, how to choose an animation firm, how to ensure admissibility and how to cut costs.

The paper concludes with the author's comparison of the camera's realistic pictures in the past and computer animation in the courtroom of the future.

Arizona Child Support Guidelines Adopted By The Arizona Supreme Court For Actions Filed After October 31, 1996.

http://www.supreme.state.az.us/drguide.htm

This site is produced by Arizona Department of Justice. It contains retrievable information on family issues and assistance. The Arizona Child Support Guidelines follow the Income Shares model developed by the Child Support Guidelines Project of the National Center for State Courts. The viewer can access any of the twenty five areas of information by clicking on the underlined subject headings given on the first page.

The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption.

http://childhouse.uio.no/childrens_rights/dci_h8.html

Produced by the Defence for Children International, this cite gives the viewer the complete text of the convention divided up into seven chapters with forty-eight articles. The viewer can access the different chapters through the list presented at the bottom of the first page.

The document states what it does and what it hopes to accomplish for children and adoption. In the scope it gives you the objectives of the Convention. The second chapter gives the requirement for adoptions

placed intercountry. The third chapter states the central authorities and accredited bodies. Part four gives the procedural requirements in intercountry adoptions. The fifth part is the recognition and effects of the adoptions. Part six is the general provisions of both parties in the adoption procedure and is followed by the final clauses which give directive information on the signature, instrument of accession, declarations and notification to the depository.

☐ Publications of Interest on the Internet

Hon. Judge David Hardy.
"Electronic Information and the
New Zealand Judiciary." Paper
given at: Challenges To Tradition:
Law and Knowledge for the New
Millennium Auckland, New
Zealand. (10 - 13 February, 1998).
http://www.knowledge-basket.co.nz/nz/llg/harvey.html

Judge Harvey presents readers with an interesting view of how the courts in New Zealand have automated; what their future plans are; and how his colleagues have responded to this new technology. Harvey begins with a brief overview of the technology available to the local judiciary and discusses some of the potential uses.

The next section outlines some of the challenges to implementing and using technology in the legal profession. Judge Harvey sees one of the biggest challenges as being the effective use of information technology. Using the new methods of accessing materials means that traditional research methods will no longer be as effective and a new set of skills will need to be developed. Although the new generation in the legal profession is being trained to research electronically, the older generation needs additional training. This need to develop new skills has many people asking, why should I bother. This inertia and fear of the

new methods is another challenge that will have to be overcome before technology can be fully incorporated into the legal profession.

Harvey goes on to discuss some of the ways technology is being used and could be used, within the courtroom setting. He outlines the pros and cons of allowing court documents to be submitted in electronic form and details some of the benefits to video-conferencing. The judge realizes that there are obstacles to the implementation of these programs, but feels that they are well within the reach of the courts.

The article concludes by discussing some of the concerns regarding the use of technology by the legal profession and presenting some suggestions as to how these concerns could be addressed. Harvey ends by stating that the primary challenges to the use of information technology by the Judiciary are acceptance and utilization. This is an interesting article that presents readers with a view from the other side of the bench.

New Materials in the Library

□ Book Reviews

Jury Trial Innovations. National Center for State Courts, 1997. KF 8972 .J879 1997.

With contributions from Judge B. Michael Dann, this book is offered as a forum to "exchange and evaluate new techniques and procedures" as they apply to jury trials. *Jury Trial Innovations* attempts to provide worthwhile and practical suggestions for improving our jury system in a "neutral and objective fashion."

All those involved - judges, lawyers, professors, psychologists and trial consultants - agree that traditional trial procedures have not taken into account how jurors process new

information. Sometimes even judges have difficulty with scientific, statistical and technical evidence. By modifying these procedures, juror contributions will become much more effective, which in turn, will lead to improved comprehension and satisfaction with jury service.

The book progresses as would a typical trial with each chapter offering a variety of innovations. Each innovation begins with a description of the technique followed by a section of brief list of questions entitled "Issues." Next the contributors outline the "Procedures" for implementing the innovation with discussions of both the "Advantages" and "Disadvantages" of each. Last, the participants offer "Authorities" and "References."

Innovations in the jury trial process are long overdue and necessary. The innovations presented in this book provide a broad view of ways to improve and strengthen this integral part of our justice system.

☐ Article Reviews

Patricia M. Hoff, Adrienne E. Volenik, & Linda K. Girdner, "Jurisdiction in Child Custody and Abduction Cases: A Judge's Guide to the UCCJA, PKPA, and the Hague Child Abduction Convention." 48 Juvenile and Family Court Journal (Spring 1997).

Eva J. Klain, "Judges' Guide to Criminal Parental Kidnapping Cases." 48 *Juvenile and Family Court Journal* (Spring 1997).

The Spring 1997 issue of *Juvenile* and Family Court Journal includes two monograph-length "bench books" on child custody and abduction issues. "Jurisdiction in Child Custody and Abduction Cases," originally prepared for the American Bar Association Center for Children and the Law, is a comprehensive

examination of jurisdiction issues and procedures under the Uniform Child Custody Jurisdiction Act (UCCJA), the federal Parental Kidnapping Prevention Act (PKPA), and the Hague Convention on the Civil Aspects of International Child Abduction. Written largely in a question-and-answer format, with checklists at the outset of each chapter, this article covers pleadings, notice, and parties; interstate judicial communication and cooperation: jurisdiction in initial custody and modification determinations; drafting and enforcing custody orders; attorney fees and costs awards; and special issues such as military parents, domestic violence, and international custody cases.

"Judges' Guide to Criminal Parental Kidnapping Cases," originally prepared for the Parental Kidnapping Project of the American Prosecutors Research Institute's National Center for Prosecution of Child Abuse, focuses more on the prosecution and trial of criminal parental kidnapping cases, although the opening overview of parental kidnapping discusses both the civil and criminal aspects of kidnapping and the coordination of civil and criminal proceedings. The author covers in detail pretrial proceedings and issues; trial issues; and sentencing options and factors. The article is extensively footnoted and includes references for further research, and appendices comparing state statutes on a number of key issues that arise in abduction cases.

Kayler, Susan J. "Focus on Photo Radar." 34 *Arizona Attorney* 13 (June 1998).

Living in Arizona, almost everyone has an opinion - either for or against - about photo radar and its impact on traffic. Safety concerns aside, there are procedural problems in the way citations are issued that have some people questioning the legality of the system.

Kayler takes an in-depth look at how the photo radar system currently operates in Arizona and outlines some of the problems inherent in the citation process. The article begins by describing a typical case as it is handled by the Scottsdale photo radar court. Kayler explains how the discovery process works, what the state uses as evidence, and how the defendant could respond to the evidence submitted. One of the key issues in the photo radar citation is identification. The article takes a hard look at how this process takes place and discusses some possible methods of defense.

Although there is little case law in Arizona dealing with the issue of photo radar, Kayler does provide readers with an analysis of other cases on the subject and discusses their impact on the photo radar process. The article concludes by discussing some of the additional problems with the system and provides readers with information on some possible defenses.

Anyone who is interested in learning more about how photo radar citations are issued and how courts are handling this matter will find this article fascinating.

Recent Court Decisions

Little v. Little, 269 Ariz. Adv. Rep. 22 (Court of Appeals, Division 1, May 21,1998).

The Arizona Court of Appeals recently held that an individual who voluntarily quits a job to pursue a law degree is entitled to a modification of child support based upon a "substantial and continuing change in circumstances."

The parties, Lisa Little (Petitioner) and Billy Little (Respondent), were divorced in 1995. At the time, Billy Little was employed by the Air Force and was ordered to pay \$1,186.00 a month for child support. In August of

1996, Mr. Little terminated his employment with the Air Force, entered law school, and filed for a modification of child support. He requested that the support be reduced to \$239.00 per month.

The trial court denied his request stating that he "unilaterally terminated his position with the Air Force" and that he could have chosen to attend a school that offered evening classes.

The trial court went on to say that "Respondent's subjective intent was to further his own ambition. If this Court were to reduce or abate Respondent's child support obligation, it would be to the children's immediate detriment and their previously established needs. "

In reversing the trial court, the appellate court ruled that a "good-faith, voluntary change in employment which results in a diminished financial ability may constitute a substantial change in circumstances justifying a reduction in child support payments."

One reason the respondent decided to terminate his employment with the Air Force was because of the possibility of his being transferred outside of the Phoenix area thus affecting this relationship with his children. His desire to go to law school was known to the Petitioner and in pursuing a law degree, the Respondent was embarking on "a career that could well result in enhanced economic fortunes." In turn, the children would benefit from such fortunes.

In its opinion, the Court does caution others who may want to pursue a different career. They stress that "the good-faith test is fact specific" and that the opinion "should not be read as a bright-line rule in permitting modifications of support obligations."

Russell v. Royal Maccabees Life Insurance Company, 268 Ariz. Adv. Rep. 51 (Court of Appeals, Division 1, May 7, 1998).

In 1980, Stephen Russell was arrested and charged with felony insurance fraud and felony theft. He pled guilty to the theft charge and had the insurance fraud charge dismissed. In 1981, he was sentenced to four years probation. Only after serving seven months of his sentence, appellant was granted an early release. In 1982, he petitioned the Court, under A.R.S. §13-907, to vacate his judgment of guilt, dismiss the charges, and to restore his civil rights. His request was once again granted.

Mr. Russell's attorney advised him that when asked if he had ever been convicted of a felony, he could respond in the negative.

In 1992, the appellate applied to Royal Maccabees Life Insurance Company for disability insurance and, as was advised by his attorney, answered "no" to the question "[H]as the Proposed Insured(s) in Question 1 ever been convicted of a felony?"

In 1994, the Stephen Russell was placed on total disability by his doctor after suffering injuries in an automobile accident. Royal denied his claim on the grounds that he was not disabled. He subsequently filed suit and after a background check, the insurance company moved to file an amended answer and counterclaim to "assert rescission as an affirmative defense because of the newly discovered conviction."

After that motion was granted, Royal filed for summary judgment and that motion was also granted. The appellant then filed this appeal.

In its decision, the Arizona Court of Appeals said that expungement is not the same as never having been convicted. The proof they said is in A.R.S. §13-907 which allows "that the conviction may be used as a conviction if such conviction would be admissible had it not been set

aside and may be pleaded and proved in any subsequent prosecution of such person."

The insurance company contended that the appellant made a fraudulent misrepresentation when he checked "no" on his application in answering the question about convictions. Such misrepresentation should nullify the policy. The appellee must prove that the appellant intended to deceive them. Mr. Russell relied upon the advise of his attorney and therefore the intent to deceive is an issue that must be determined by a jury.

This decision, while it deals solely with an insurance issue, could have wider implications and the issue of whether or not someone knowingly lied about a prior conviction will have to be judged on a case-by-case basis.

Recent Legislation

This year the Legislature sent 315 bills to the Governor. That's 70 fewer than in past sessions and it seems that everyone has an opinion as to why. The majority agrees that the time spent on school capital finance played a big part in the reduction of number of bills.

The general effective date for the 2nd Regular Session is August 21st; for the 3rd Special Session, July 8th, and for the 4th Special Session the effective date is August 13th.

Here are just a few highlights of some of the bills which have been signed into law. For a complete listing in bill number order with a brief description, see the June 5th issue of *Arizona Capital Times*. The June 12th issue has the 1998 enactments listed by subject. Additionally, you can check out the Arizona Legislature on-line at http://www.azleg.state.az.us/ or visit the Reference Desk where you can find paper copies of all the bills.

House Bill 2142, Chapter 294, Second Regular Session, amends A.R.S.§12-1809, Injunctions Against Harassment, to provide for injunctions for and against juveniles. The new statute reads, in part, that "[T]he parent, legal guardian, or person who has legal custody of the minor shall file the petition..." For someone who is seeking an injunction against a juvenile, the statute says that "[A]n injunction against harassment shall not be granted against a person who is less than twelve years of age unless the injunction is granted by the juvenile division of the Superior Court." Another change to the statute, while not effective until January 1, 1999, is that an injunction expires one year after service on the defendant. The filing fee for filing a petition against harassment has been reduced to \$5.00.

House Bill 2102, Chapter 228, Second Regular Session, adds A.R.S. §13-2924, Unlawful Solicitation of Tort Victims. This new statute makes it a class 1 misdemeanor to solicit any victim at the scene of an accident in the hopes of making money. A tort victim includes a person whose property has been damaged; a person killed or injured, or the parents, guardian, spouse, sibling or child of such a person.

Senate Bill 1133, Chapter 135, Second Regular Session, amends the Domestic Relations statutes by adding a section on covenant marriages. A.R.S. §25-901 outlines the filing requirements for a covenant marriage; §25-902 covers the procedure for converting an existing marriage into a covenant marriage; §25-903 deals with dissolving a covenant marriage while §25-904 discusses legal separations.

The new aggressive driving statute codified as A.R.S. §28-695, is House Bill 2311, Chapter 159, Second Regular Session. To be guilty of aggressive driving, at least two of the following must occur: failure to obey

traffic control devices, overtaking and passing another vehicle on the right by driving off the pavement or main traveled portion of the roadway, unsafe lane change, following a vehicle too closely, or failing to yield the right-of-way.

The last highlight is the newly enacted statute relating to jaguars. Senate Bill 1106, Chapter 66 makes it a class 1 misdemeanor to unlawfully kill, wound or possess "a jaguar or any part thereof." The statute also provides for a fine of "not more than seventy-two thousand five hundred dollars for each violation."

□ Did You Know?

Find out how much you actually know about our state's history.

- 1. Scottsdale was originally known as Orangedale circa 1894.
- 2. Bethany Home Road was named for an early-day tuberculosis sanitarium and goat farm at the intersection of what is now 16th Street and Bethany Home.
- 3. Snowflake was the county seat of Apache County from 1879 to 1881. The town was named for its two founders, Erastus Snow and William Flake.
- 4. St. Johns was originally called San Juan after an early pioneer wife, Dona Maria de San Juan Baca, until the Post Office in Washington changed the name to the English version.
- 5. The City of Mesa, settled in 1878, was first called Hayden (at that time Hayden's Ferry was already known as Tempe), then Zenos and finally Mesa in 1888.
- 6. The Spanish City of Tucson founded in 1775 became a Mexican City after the Revolution in 1821 and finally an American City with the 1854 Gadsden Purchase.

Source: Brooks, James F. "On the Arizona Legal Scene." Arizona Republic, various issues. Reprinted with permission.

Contributors

Editor: Susan Armstrong

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□ Recently Received Books

Bohr, Sarah H. Social Security Issues Annotated James Publishing KF3469 .B64 1998

Contemporary Corporation Forms, 2nd ed.
Aspen Law & Business
KF1410 .P745

Evans, James Government on the Net Nolo Press ZA4226 .E93 1998

Geever, Jane C. Guide to Proposal Writing, rev. ed. Foundation Center CMS HG177.5.U6 G44 1997

Grants for Libraries and Information Services Foundation Center CMS Z683.2.U6 G7

Grenig, Jay E.

Handbook of Federal Civil Discovery
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West Group
KF8900 .G75 1998

Hare, Jr., Francis H.
Full Disclosure: Combating
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ATLA Press
KF8900 .H375 1994

Imwinkelried, Edward J.

Evidentiary Foundations, 4th ed.
Lexis Law
KF8935 .l45 1998

Journal of Health Care Law & Policy University of Maryland School of Law Third Floor, Periodicals

Kolczynski, Phillip J.

Preparing for Trial in Federal Court
James Publishing
KF8900 .K65 1994

National Guide to Funding for Libraries & Information Services, 4th ed. Foundation Center CMS Z683.2.U6 N38 1997

Nobile, Robert J. *Guide to Employee Handbooks: A Model for Management*Warren, Gorham & Lamont

KF3455 .N635

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University of Pennsylvania Journal of Constitutional Law
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☐ Recent Articles: Adoption, Foster Care and Juvenile Justice

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